THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

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W.P. NO : 18853 of 2005

Dated: 25.08.2005

Between:

P.Prabhakar Reddi

..Petitioner

and

State of A.P. rep., by its Secretary to Government,Municipal Administration & Urban Developmetn Department, Secretariat, Hyderabad and another.

..Respondents

THE HON'BLE SRI JUSTICE ELIPE DHARMA RAO

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W.P. NO : 18853 of 2005

ORDER:

Seeking a direction to declare the action of the respondent in issuing Memo No.23749/Ele.12004-1MA dated 18.06.2005 as arbitrary and illegal, the present writ petition has been preferred.

The materials facts that are beyond any controversy are brief and can be stated thus:

The petitioner was blessed with two children through his first wife. The

petitioner's first wife expired during the course of second delivery on 8.7.1993. Later, the petitioner was blessed with another child through his second wife. As such, he was disqualified to contest the ensuing Municipal elections. Under Section 13-B of the A.P. Municipalities Act, 1965 (for brevity 'the Act'), the Government has got power to give exemption. Hence, he made an application on 2.8.2004 to the 2nd respondent and the same was forwarded to the 1st respondent. But, without affording an opportunity of hearing, the 1st respondent had passed the order impugned. Hence, the writ petition.

The contention of the learned counsel for the petitioner is that the Government is the competent authority to exercise the power of relaxation. He further contends that where an authority makes an order in exercise of quasi judicial function, it must record its reasons in support of the order. He also contends that the rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Revenue.

Perused the entire material available on record and the order impugned.

There is no dispute with regard to the alleged second marriage of the petitioner on the eve of death of his first wife and the alleged birth of the children out of the wedlock. The grievance of the petitioner is that without affording an opportunity of hearing, the 1st respondent passed the order impugned in a routine manner, although he got exemption under the provisions of 13-B of the Act. For better appreciation, I would like to quote the provisions of 13-B of the Act as follows:

> 13-B Persons having more than two children to be disqualified:
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> A person having more than two children shall disqualified for election or for continuing as member:
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> Provided that the birth within one year from the date of commencement of the Andhra Pradesh Municipal Laws (Second Amendment) Act, 1994 (hereinafter in this section referred to as the date of such

commencement) of an additional child shall not be taken in to consideration for the purposes of this section.

Provided further that a person having more than two children (including the child if any born within one year from the date of such commencement) shall not be disqualified under this Section for so long as the number of children he had on the date of such commencement does not increase.

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of person for reasons to be recorded in writing.

In the light of the above provisions, the question that arises for consideration is as to whether the petitioner is having more than two children (including the child if any born within the one year from the date of such commencement) or not and if so, whether he shall not be disqualified or not. In this regard, it needs an enquiry after affording an opportunity to the petitioner so as to decide whether the petitioner comes under the benefit of the above provisions or not.

Apart from that, the 1st respondent ought to have given an opportunity of being heard to the petitioner. Otherwise he should have recorded his reasons in writing that the disqualification in the above section shall not apply to the petitioner. But, the 1st respondent failed to do so.

Looking to the over all circumstances of the case, it is conspicuously clear that the order impugned suffers from legal infirmities and the impugned order is passed without recording the reasons while rejecting the application of the petitioner. Therefore, the order impugned is liable to be set aside.

Accordingly, the writ petition is allowed, setting aside the order impugned. However, the 1st respondent is directed to re-consider the application of the petitioner after affording an opportunity to the petitioner and pass appropriate orders in accordance with law.

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25.08.2005

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